

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

CAMDEN NATIONAL BANK,)
)
 PLAINTIFF)
)
 v.)
)
 WALTER J. SKAYHAN, III, ET AL.,)
)
 DEFENDANTS)

CIVIL No. 09-199-P-H

DECISION AND ORDER ON PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT

On March 1, 2010, I heard oral argument on the plaintiff's motion for summary judgment.

Camden National Bank has sued these two individual defendants on their guarantees of the Note of the principal obligor, Maine Investment Properties, LLC. The Bank has moved for summary judgment. It is undisputed that the defendants signed the guarantees, and that the principal obligor has defaulted. The defendants have resisted the motion only on the basis that damages cannot yet be determined because the Bank has a lien against certain real estate owned by entities related to the principal obligor, and that the real estate may be sold and may ultimately recompense the Bank in part.

The motion for summary judgment is **GRANTED**. The guarantees are unconditional and do not require the Bank to seek other recourse. This is not

a case of failure to mitigate, unlike the situation before Justice Delahanty in Jerome and Mark Duguay Investments v. Diaz, 1985 Me. Super. LEXIS 209 (July 29, 1985), where he found that the landlord had not taken steps to try to lease the property as to which the principal obligor had defaulted. The guarantees here are clear that they are “a guaranty of payment and performance and not of collection, so Lender can enforce this Guaranty against Guarantor even when Lender has not exhausted Lender’s remedies against anyone else obligated to pay the Indebtedness or against any collateral securing the Indebtedness, this Guaranty or any other guaranty of the Indebtedness.” Commercial Guaranty at 1 (Ex. B to Aff. of Stephen Matteo) (Docket Item 18-2). Under the guarantees, the guarantors waived any right to require the Bank to resort for payment against any other person or to proceed against collateral. Id. at 2.

SO ORDERED.

DATED THIS 8TH DAY OF MARCH, 2010

D. Brock Hornby
D. BROCK HORNBY
UNITED STATES DISTRICT JUDGE